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23.7.07

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2321 of 2002

PETITIONER : Shekhar Sahu.

VERSUS

RESPONDENTS : State of Chhattisgarh & Others

Post for order on 23rd-7-2007

Sd/-
Satish K. Agnihotri
Judge

(147)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2321 of 2002

PETITIONER : Shekhar Sahu, aged about 25 years, S/o Shri Subhash Sahu, Excise Businessman, R/o 1-8/1305, Shiv Bhawan, New Shanti Nagar, Raipur (C.G.)

VERSUS

RESPONDENTS :
1. State of Chhattisgarh, Through Secretary, Department of Excise, Mantralaya, Shastri Chowk, Raipur (C.G.)
2. The Excise Commissioner, Shiv Bhavan, Bairan Bazar, Raipur (C.G.)
3. Collector, Excise, Raipur (C.G.)
4. Assistant Commissioner, Excise, Collectorate Building, Raipur (C.G.)
5. District Excise Officer, Collectorate Building, Raipur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri Prashant Jayaswal, Senior Advocate with Shri Vinay Pandey, Advocate for the petitioner.
Shri A.S.Kachhwaha, Government Advocate for the State/respondents.

ORDER

(Passed on 23rd day of July, 2007)

1. By this petition, the petitioner impugns the order dated 16.10.2002 (Annexure P/16) passed by the Commissioner (Excise) Chhattisgarh, Raipur and seeks a writ of mandamus directing the respondents to take the shop-in-dispute as surrendered w.e.f 01.08.2002 or 26.07.2002 or 31.07.2002. The petitioner further seeks a direction to the respondents not to levy any penalty or recover any pre-settlement charges and refund the amount already paid by the petitioner towards the compulsory Minimum Guarantee Quota (for short 'MGQ').

2. The indisputable facts, in nutshell are that the respondent State framed Chhattisgarh Excise Settlement of License for Retail Sale of Country/Foreign

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Liquor Rules, 2002, in exercise of powers vested under section 62 read with section 18 of the Excise Act, 1915 (hereinafter referred to as 'the Rules, 2002'). The Rules, 2002 came into force w.e.f 15.03.2002 on publication in the extraordinary gazette of Chhattisgarh. In accordance with the provisions of Rules, 2002, the Collector, Raipur, issued a notification dated 23.03.2002 (Annexure P/1) calling for applications from the persons interested in retail outlet of liquor shops. The petitioner applied for one shop of Gol Bazar group at Raipur and he was granted license by public lottery system. The petitioner paid a sum of Rs. 1,03,23,231/- as license fee with pre-determined minimum guarantee quota of 64,950 bulk liters of malt and 1,11,000 proof liters of spirit per month (Annexure P/2).

3. All the licenses granted pursuant to the notification dated 23.03.2002 was by public lottery system prescribed under the Rules, 2002. The nearby shops were allotted on the basis of tender method wherein the annual license fee and the MGQ were negotiable. Other three shops at Kadir Chowk, Motor Stand and Malviya Road, were allotted under tender method. The license fee for shop at Kadir Chowk was Rs. 35 Lacs, at Motor Stand Rs. 68 Lacs and Malviya Road, Rs. 54 Lacs and MGQ was also much lower for these three shops as compared to the Gol Bazar shop allotted to the petitioner. The petitioner made a representation dated 27.3.2002 (Annexure P/3) to the Collector, Raipur stating that since the license fee and the MGQ of other nearby shops are much less, the same formula be applied to the petitioner's shop at Gol Bazar also and accordingly, the same be reduced. Thereafter, vide letter dated 20.7.2002 (Annexure P/4), the petitioner made a request to the Excise Commissioner for reduction of MGQ and license fee of the petitioner's shop on the ground that the license fee of nearby three shops

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which are less and the petitioner in not in a position to sell the liquor in view of the minimum price offered by other three shops. On 01.07.2002, the petitioner submitted one month's advance notice to surrender the shop (Annexure P/6) stating that the license fee of the petitioner's shop at Gol Bazar is much higher than the nearby shops. The petitioner is not in a position to sell any liquor, therefore, the petitioner wants to surrender the shop on account of injustice meted out to him.

4. The Collector (Excise) Raipur, issued a show-cause-notice dated 31.7.2002 (Annexure P/7) to the petitioner stating that the petitioner has failed to lift the minimum quantity of malt and spirit as per licensing conditions. Therefore, the Collector, vide order dated 06.08.2002 (Annexure P/11) having noticed that the petitioner has failed to deposit the balance license fee, therefore, the petitioner's license in respect of allotment of shop at Gol Bazar was cancelled in accordance with Rules 23(1)(Ch)(1)(2) and condition No. 8(Kha)(Ga) of F.L. license.

5. By order dated 27.08.2002 (Annexure P/12) a demand for payment of Rs. 70,59,082/- was raised and the petitioner was directed to pay the same within a period of 7 days. Revenue Recovery Certificate was issued thereafter on 07.09.2002.

6. Being aggrieved, the petitioner filed an appeal before the Excise Commissioner (Annexure P/13). The Excise Commissioner, by order dated 16.10.2002 (Annexure P/16) dismissed the appeal of the petitioner holding that the notice dated 01.07.2002 was not a notice in legal sense but it was expectation coupled with notice. The Excise Commissioner accordingly upheld the order of the Collector for making payment of license fee of the

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remaining period with loss of money to the Government. Being aggrieved, the petitioner has filed this petitioner for the prayer as stated hereinabove.

7. Shri Prashant Jayaswal, learned senior counsel with Shri Vinay Pandey, learned counsel for the petitioner would submit that the grant of license for the shops at Kadir Chowk, Motor Stand and Malviya Road was granted by the tender method which was not in conformity with the Rules, 2002. The grant of the license of Gol Bazar shop to the petitioner was in accordance with Rule 8 read with Rule 11 of the Rules, 2002, whereby the license fee in case of the petitioner, was more than 1 Crore, and the other nearby shops which were allotted by tender method, the license fee was much less resulting loss of business to the petitioner as other license holders were selling liquor at a cheaper rate which was not possible for the petitioner in view of the exorbitant license fee with higher MGQ. Thus, notice dated 01.07.2002 for surrender of shop was proper, legal and justified. The petitioner, after having given one month's advance notice on 01.07.2002 surrendered his license on 01.08.2002. Thereafter, cancellation of the license after advance surrender notice by the Collector vide order dated 06.08.2002 was illegal, arbitrary and discriminatory. He further contended that the finding of the Excise Commissioner in appeal that it was a conditional notice and was based on expectation, therefore the same was not a notice in the eyes of law, is contrary to the settled principles of notice. The petitioner has complied with the provisions of Section 33 of the M.P. Excise Act, 1915 (hereinafter referred to as 'the Act, 1915') read with Rule 22 of Rules, 2002. Therefore, the petitioner has proper right to surrender the license which he did with effect from 01.08.2002. In view of the unhealthy competition in business created by grant of licenses to other three nearby shops at much lesser license

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fee by tender method, not known under the provisions of Rules, 2002, was sufficient ground for surrender of license. The respondents ought to have accepted the same.

8. Per contra, Shri A.S.Kachhwaha, learned Government Advocate appearing for the respondents would submit that the petitioner has accepted the license fee and MGQ. Therefore, he is estopped from raising the plea that he suffered huge loss on account of grant of license to nearby three shops to other persons on lesser license fee. It is admitted that it is true that there was no provision for grant of license of liquor shops by tender method under provisions of Rules, 2002. Section 18 of the Excise Act empowers the State Government to grant license to any persons under any method. Thus, the State Government was free to adopt any mode of selection of licensee that may be tender method. The Excise Commissioner, by executive order dated 01.04.2002 made clear that the shops which could not be allotted till 31st of March, 2002 by public lottery system, the same could be allotted by inviting tenders. Accordingly, the tenders were invited and the three shops as stated above were allotted to other licensees wherein the license fee was lesser and MGQ was negotiable. By negotiation, the license fee was determined at a lesser price and MGQ was also less than that of the petitioner. The surrender notice dated 01.07.2002 was not proper and the Excise Commissioner has rightly held that the same is not unsustainable under the eyes of law.

9. Having heard learned counsel for the parties, perusing the pleadings, documents and records appended thereto. It is evident that the facts are not disputed. Admittedly, the petitioner was allotted the shop at Gol Bazar wherein the license fee was Rs. 1,03,23,231/- with pre-determined minimum guarantee quota of 64,950 bulk liters of malt and 1,11,000 proof liters of

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spirit per month. Nearby three shops at Kadir Chowk, Motor Stand and Malviya Road were granted to other licensees by tender method which was not in accordance with the provisions of Rules, 2002, wherein the license fee was Rs. 35 Lacs, 68 Lacs and Rs. 54 Lacs respectively and MGQ was also much less.

10. The representation made by the petitioner was proper and justified as the nearby shops, on account of less license fee, were in position to sell liquor at much cheaper rates which was not possible for the petitioner to do, and as such, averments of the petitioner to the effect that he was not in a position to sell the liquor and suffered loss of business, is proper and justified. The respondents ought to have considered the facts as represented by the petitioner to avoid unhealthy competition between the petitioner and other licensees. The same was not done. The petitioner was forced to submit one month's advance surrender notice on 01.07.2002 which came into effect from 01.08.2002.

11. The show-cause-notice dated 31.7.2002 issued by the Collector (Excise) Raipur and thereafter cancellation order dated 06.08.2002 directing the petitioner to deposit the balance license fee was also not proper and in accordance with the provisions of law, as the same was passed ignoring the representation and surrender notice sent by the petitioner.

12. The Supreme Court, in the matter of Commissioner of Sales Tax Vs. Subhash and Company[1], has defined the term 'notice' which is as under:

> "15. The term "notice" originated from the Latin word "notifia" which means "a being known" or a knowing and is wide enough in legal circle to include a plaint filed in a suit. "Notice" has been defined in various judicial dictionaries and dictionaries as follows: The Judicial Dictionary, Words and Phrases Judicially Interpreted, 2nd Edn., by F. Stroud (p. 1299)

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"Notice is a direct and definite statement of a thing, as distinguished from supplying materials from which the existence of such thing may be inferred."
Webster's Universal College Dictionary, 1997 Edn., (p. 543)
"Information, warning or announcement of something impending; notification; to give notice of one's intentions; a written or printed statement conveying such information or warning; as for renting or employment, that the agreement will terminate on a specified date — 'She gave her employer two weeks' notice.' "
Oxford Concise Dictionary
"an intimation; intelligence, warning" and has the meaning in the expression like "give notice", "have notice" or "formal intimation of something or instruction to do something" and has the expression like "notice to quit", "till further notice".
Chamber's 20th Century Dictionary, 1993 (p. 1154)
"intimation; announcement; information; warning; a writing, placard etc. conveying an intimation or warning; time allowed for preparation, etc."
Chamber's Dictionary vide Allied Chambers (India) Ltd., Reprint 1994, 1995 (p. 1154)
"intimation; announcement; a formal announcement made by one of the parties to a contract of his or her intention to terminate that contract; information, especially about a future event; warning; a writing; placard, board etc. conveying an intimation or warning; time allowed for preparation; cognizance; observation; heed; mention; a dramatic or artistic review; civility or respectful treatment; a notion etc."
Law Lexicon Dictionary — A Legal Dictionary of Legal Terms and Phrases Judicially Defined, 4th Edn., Vol. II, 1989 (p. 226)
"A person is said to have notice of a fact, when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it."
The Law Lexicon Dictionary, 2nd Edn., 1997 (p. 1322)
(1) Intimation; a writing; placard, board etc. conveying an intimation or warning [Section 154 IPC and Article 61(2)(a), Constitution of India]; (2) Knowledge or cognizance (Section 56, Indian Evidence Act).
"Notice", in its legal sense, may be defined as information concerning a fact actually communicated to a party by an authorised person, or actually derived by him from a proper source, or else presumed by law to have been acquired by him, which information is regarded as equivalent to knowledge in its legal consequences. Dictionary further states: Co Lit 309 Tomlin's Law Dictionary

Notice is making something known, of what a man was or might be ignorant of before. And it produces diverse effects, for, by it, the party who gives the same shall have the same benefit, which otherwise he should not have had; the party to whom the notice is given is made subject to some action or charge, that otherwise he had not been liable to; and his estate in danger of prejudice.

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"Notice is a direct and definite statement of a thing as distinguished from supplying materials from which the existence of such thing may be inferred." (Per Parke, B. Burgh v. Legge 5 M and W 420 : 8 LJ Ex. 258)

The Dictionary gives some other definitions of "notice" as:

— The legal instrumentality by which knowledge is conveyed, or by which one is charged with knowledge.

— The term "notice" in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief, as well as direct information of that fact.

— In its popular sense "notice" is equivalent to information intelligence, or knowledge."

13. Thus, applying the well settled definition of notice to the facts of the case, the letter dated 01.07.2002 is a clear notice of surrender. The word with the language employed that in the event justice is not meted out to the petitioner does not change the nature of notice. This was sufficient notice of surrender. The notice starts with the subject "गोल बाजार अंग्रेजी शराब दुकान सरेन्डर हेतु एक माह की अग्रिम सूचना" The Subject was clear and the reasons stated in the contents of the letter and at the bottom also it was clearly written that "इस पत्र को सरेन्डर प्रकिया की नोटिस समझा जाये ". It is therefore held that the letter dated 01.07.2002 (Annexure P/6) was proper notice. The reasons stated in the letter were necessary to justify reasons of notice of surrender.

14. Rule 22 of the Rules, 2002 reads as under:

> "**22. Surrender of licence.**- A licensee may surrender his licence after giving at least one month's notice in writing to the licensing authority under provisions of Section 33 of the Act. On receipt of such application the licensing authority will take steps according to Section 33 of the Act. The licensing authority shall also proceed for resettlement of the shop without delay for the remaining period of the excise year."

15. Section 33 of the M.P. Excise Act, 1915 deals with surrender of notice which reads as under:

> "**33. Surrender of licences.**-(1) Any holder of a licence granted under this Act to sell an intoxicant may surrender his licence on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same, and on payment of the fee payable for the licence for the remainder of

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the period for which it would have been current put for such surrender:

Provided that if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a licence he may remit the holder thereof the sum so payable on surrender or any portion thereof."

16. Bare reading of section 33 provides that if there are sufficient reasons for surrendering a license, the Excise Commissioner may remit to the holder thereof the sum so payable on surrender or any portion thereof.

17. In order to give the sufficient reasons, it was necessary to write the reasons in the advance surrender notice. The respondent authorities ought to have accepted the notice in view of the fact that due to unhealthy atmosphere created in business by grant of license to three nearby shops, i.e. Kadir Chowk, Motor Stand and Malviya Road at a much less license fee and MGQ, it was difficult for the petitioner to run the business.

18. For the reasons stated hereinabove, and as a result, this petition is allowed. The order dated 6.8.2002 (Annexure P/11) passed by the Collector, notice dated 8.8.2002 (Annexure P/12) and notice dated 27.8.2002 (Annexure P/14) and order dated 16.10.2002 (Annexure P/16) passed by the Commissioner in appeal, are quashed and the petitioner is entitled to all the consequential benefits flowing from this order.

19. In the facts and circumstances of this case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. AIR 2003 (SC) 1628

Amit